

MAY 05 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHERINE SUMARDI,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-74436

Agency No. A78-361-153

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 22, 2008**

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Catherine Sumardi, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

judge's ("IJ") decision denying her application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *see Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003), and we deny the petition for review.

The record does not compel the conclusion that Sumardi's untimely filing of her asylum application should be excused due to extraordinary circumstances. *See* 8 U.S.C. § 1158(a)(2)(D); *see also* 8 C.F.R. § 208.4(a)(5). Accordingly, we deny the petition as to her asylum claim.

Substantial evidence supports the IJ's finding that Sumardi did not establish that she suffered past persecution. *See Nagoulko*, 333 F.3d at 1016-17. In addition, the record does not compel a finding that it is more likely than not that Sumardi will be persecuted on account of her religion or ethnicity if she return to Indonesia. *See Hakeem v. INS*, 273 F.3d 812, 816-17 (9th Cir. 2001); *see also Lolong v. Gonzales*, 484 F.3d 1173, 1179-81 (9th Cir. 2007) (en banc). Therefore, substantial evidence supports the IJ's denial of withholding of removal. *See Hakeem*, 273 F.3d at 817.

Substantial evidence further supports the denial of CAT relief because Sumardi did not show it is more likely than not that she will be tortured if she returns to Indonesia. *See Singh v. Gonzales*, 439 F.3d 1100, 1113 (9th Cir. 2006).

Lastly, we conclude that the IJ adequately considered the record evidence. *See Don v. Gonzales*, 476 F.3d 738, 744 (9th Cir. 2007).

PETITION FOR REVIEW DENIED.